



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

MISHELL B. KNEELAND
Assistant Attorney General
General Litigation Division

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February 2, 2010

Electronically Filed with ECF System

The Honorable Vanessa Gilmore
United States Courthouse
515 Rusk Ave., Room 9513
Houston, Texas 77002

RE: *Darin Duncan v. University of Health Science Center at Houston;*
In the USDC, Southern District of Texas, Houston Division; No. 4:09-CV-00715

Dear Judge Gilmore:

Per my conversation with your chambers this afternoon, I submit this request for a hearing on discovery issues pursuant to Procedure 4.D.¹ Plaintiff's failure to serve initial disclosures or responses to UTHSC-H's First Request for Production to Plaintiff and First Set of Interrogatories, which were served on November 10, 2009, is hampering my ability to prepare this case in accordance with the deadlines set forth in the Court's scheduling order of September 8, 2009.

As an initial matter, Plaintiff has never served his Rule 26(a)(1) Disclosures, despite my repeated requests. See Letter of October 26, 2009, Letter of November 10, 2009, and Email of January 8, 2010. Those were, by my calculations, due on September 18, 2009. Defendant timely sent Initial Disclosures to Plaintiff.

Nor has Plaintiff responded to Defendant's Interrogatories or RFPs. See Letter of November 10, 2009, corrected Certificate of Service, and Emails of January 8 and 29, 2010. Those were served by certified mail and the responses were due by December 14, 2009. After I contacted Mr. Kallinen, and after the deadline for response, Plaintiff on January 8 requested an extension of time. I consented to such an extension if Plaintiff would agree that his objections to the RFPs and Interrogatories were waived. Mr. Kallinen did not respond. I received no responses on the 20th and finally contacted Mr. Kallinen on the 29th. He told me by email that he would respond to all outstanding discovery by Monday, February 1. I have not received any discovery.

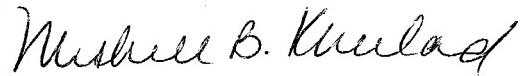
¹ Because Mr. Kallinen does not have a fax machine, I am filing this letter in the record to effect service on Mr. Kallinen.

I contacted Mr. Kallinen today by email to let him know that I planned to call the Court. I have not had a response.

Nor has Mr. Kallinen provided dates for Plaintiff's deposition, as I requested on November 10, 2009.

I request that Plaintiff be ordered to immediately answer the outstanding RFPs and Interrogatories, without objections, which have been waived. I also request that he be ordered to provide initial disclosures.

Respectfully submitted,



Mishell B. Kneeland
Assistant Attorney General
General Litigation Division

brc

cc: Randall Kallinen (by ECF)
Client Agency



**ATTORNEY GENERAL OF TEXAS
GREG ABBOTT**

MISHELL B. KNEELAND
Assistant Attorney General
General Litigation Division

PHONE: (512) 463-2120
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EMAIL: Mishell.Kneeland@oag.state.tx.us

October 26, 2009

Randall L. Kallinen
511 Broadway St.
Houston, TX 77012

RE: *Darin Duncan v. University of Health Science Center at Houston;*
In the USDC, Southern District of Texas, Houston Division; No. 4:09-CV-00715

Dear Mr. Kallinen:

Please be advised that I have no record of receiving Plaintiff's Rule 26(a) Disclosures in the above-referenced case. According to my calculations, the disclosures were due on September 18, 2009, more than one month ago.

Please provide Plaintiff's Disclosures as soon as possible. Thank you for your cooperation in this matter.

Very truly yours,

Mishell B. Kneeland

Mishell B. Kneeland
Assistant Attorney General
General Litigation Division

brc

cc: Client Agency



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

MISHELL B. KNEELAND
Assistant Attorney General
General Litigation Division

PHONE: (512) 463-2120
FAX: (512) 320-0667
EMAIL: Mishell.Kneeland@oag.state.tx.us

November 10, 2009

By facsimile and email

Randall L. Kallinen
511 Broadway St.
Houston, TX 77012

RE: *Darin Duncan v. University of Health Science Center at Houston;*
In the USDC, Southern District of Texas, Houston Division; No. 4:09-CV-00715

Dear Mr. Kallinen:

I enclose the following discovery requests:

- UTHSC-H's Request for Admissions to Plaintiff;
- UTHSC-H's First Request for Production to Plaintiff; and
- UTHSC-H's First Set of Interrogatories to Plaintiff.

Also, as I explained in my letter of October 23, 2009, I have not received Plaintiff's Rule 26(a)(1) Disclosures, which were due on September 18, 2009. I have not duplicated in the discovery requests any requests for information that Plaintiff was required to disclose in his Rule 26(a)(a) Disclosures and reserve the right to move to compel responses to the required disclosures, although I hope that will not become necessary.

Finally, please provide dates that Mr. Duncan is available for his deposition.

Very truly yours,

Mishell B. Kneeland
Assistant Attorney General
General Litigation Division

brc

cc: Client Agency

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DARIN DUNCAN,
Plaintiff

§
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§
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§
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§
§

V.

CIVIL ACTION NO. 4:09-CV-00715

UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT HOUSTON,
Defendant.

§
§
§
§

UTHSC-H'S AMENDED CERTIFICATE OF SERVICE RE: DISCOVERY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of:

- UTHSC-H's Request for Admissions to Plaintiff;
- UTHSC-H's First Request for Production to Plaintiff; and
- UTHSC-H's First Set of Interrogatories to Plaintiff.

were sent by First Class Mail, Return Receipt Requested (CMRRR # 7007 0220 0000 5713 5971) on the 10th day of November, 2009, to:

Randall L. Kallinen
511 Broadway St.
Houston, TX 77012
Attorney for Plaintiff

Mishell B. Kneeland
MISHELL B. KNEELAND
Assistant Attorney General

From: Mishell Kneeland
To: attorneykallinen@aol.com
CC: Bonnie Chester
Date: 1/8/2010 8:30 AM
Subject: Re: Discovery

Mr. Kallinen,

Had you asked in advance of the due date for an extension, I could perhaps have accommodated you. As it is, all objections to the outstanding discovery have been waived. And I really have no idea why you were unable to provide even Rule 26 disclosures in a timely fashion. I will have to confer with my client about whether or not to file a motion to compel prior to the 20th.

Mishell

>>> <attorneykallinen@aol.com> 01/08/10 8:08 AM >>>

Dear Ms. Kneeland,

I hope all is well. I am preparing for trial and been very busy as well as a little under ther weather. I apologize for the lateness of discovery responses, however, I am shooting for the 20th to serve them. I hope this okay and again I apologize for the lateness. Thank you.

Sincerely,
Randall L. Kallinen
Attorney and Counselor at Law
511 Broadway Street
Houston, Texas 77012
Telephone: 713/320-3785
E-mail: AttorneyKallinen@aol.com

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From: Mishell Kneeland
To: attorneykallinen@aol.com
CC: Chester, Bonnie
Date: 1/8/2010 10:32 AM
Subject: Re: Discovery

Mr. Kallinen,

If you will acknowledge that Plaintiff's objections to the Interrogatories an Requests for Production have been waived and will agree to get us those, plus your Rule 26 disclosures, and to withdraw the improper objections and supplement the responses to RFAs 13, 14, 16-18, my client agrees not to move to compel until after the 20th. Please let me know.

Best,
Mishell

>>> <attorneykallinen@aol.com> 1/8/2010 8:08 AM >>>

Dear Ms. Kneeland,

I hope all is well. I am preparing for trial and been very busy as well as a little under ther weather. I apologize for the lateness of discovery responses, however, I am shooting for the 20th to serve them. I hope this okay and again I apologize for the lateness. Thank you.

Sincerely,
Randall L. Kallinen
Attorney and Counselor at Law
511 Broadway Street
Houston, Texas 77012
Telephone: 713/320-3785
E-mail: AttorneyKallinen@aol.com

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From: Mishell Kneeland
To: AttorneyKallinen@aol.com
CC: Chester, Bonnie
Date: 1/29/2010 2:14 PM
Subject: Fwd: Re: Discovery

Mr. Kallinen,

I have now requested responses to the discovery several times. They are beyond late. In accordance with Judge Gilmore's procedure 4.D, please let me know whether you agree to the terms outlined below. If not, I will be calling the case manager to seek a hearing. Please let me know by COB today.

Mishell

>>> Mishell Kneeland 1/8/2010 10:32 AM >>>

Mr. Kallinen,

If you will acknowledge that Plaintiff's objections to the Interrogatories and Requests for Production have been waived and will agree to get us those, plus your Rule 26 disclosures, and to withdraw the improper objections and supplement the responses to RFAs 13, 14, 16-18, my client agrees not to move to compel until after the 20th. Please let me know.

Best,
Mishell

>>> <attorneykallinen@aol.com> 1/8/2010 8:08 AM >>>

Dear Ms. Kneeland,

I hope all is well. I am preparing for trial and been very busy as well as a little under the weather. I apologize for the lateness of discovery responses, however, I am shooting for the 20th to serve them. I hope this okay and again I apologize for the lateness. Thank you.

Sincerely,
Randall L. Kallinen
Attorney and Counselor at Law
511 Broadway Street
Houston, Texas 77012
Telephone: 713/320-3785
E-mail: AttorneyKallinen@aol.com

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=

From: Mishell Kneeland
To: attorneykallinen@aol.com
CC: Chester, Bonnie
Date: 1/29/2010 2:21 PM
Subject: Re: Discovery

Mr. Kallinen,

Your response does not indicate whether or not you plan to assert objections, which have been waived. Please let me know.

Mishell

>>> <attorneykallinen@aol.com> 1/29/2010 2:18 PM >>>

Dear Ms. Kneeland,

I will have this accomplished and fully responded to by this Monday. Thank you.

Sincerely,
Randall L. Kallinen
Attorney and Counselor at Law
511 Broadway Street
Houston, Texas 77012
Telephone: 713/320-3785
E-mail: AttorneyKallinen@aol.com

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-----Original Message-----

From: Mishell Kneeland <mishell.kneeland@oag.state.tx.us>
To: attorneykallinen@aol.com
Cc: Bonnie Chester <bonnie.chester@oag.state.tx.us>
Sent: Fri, Jan 29, 2010 2:14 pm
Subject: Fwd: Re: Discovery

Mr. Kallinen,

I have now requested responses to the discovery several times. They are beyond late. In accordance with Judge Gilmore's procedure 4.D, please let me know whether you agree to the terms outlined below. If not, I will be calling the case manager to seek a hearing. Please let me know by COB today.

Mishell

>>> Mishell Kneeland 1/8/2010 10:32 AM >>>

r. Kallinen,

If you will acknowledge that Plaintiff's objections to the interrogatories and Requests for Production have been waived and will agree to get us those, plus your Rule 26 disclosures, and to withdraw the improper objections and supplement the responses to RFAs 13, 14, 6-18, my client agrees not to move to compel until after the 20th.

Please let me know.

Best,

ishell

>>> <attorneykallinen@aol.com> 1/8/2010 8:08 AM >>>

Dear Ms. Kneeland,

I hope all is well. I am preparing for trial and been very busy as well as a little under the weather. I apologize for the lateness of discovery responses, however, I am shooting for the 20th to serve them. I hope this is okay and again I apologize for the lateness. Thank you.

Incerely,

andall L. Kallinen

ttorney and Counselor at Law

11 Broadway Street

ouston, Texas 77012

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-mail: AttorneyKallinen@aol.com

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From: Mishell Kneeland
To: AttorneyKallinen@aol.com
CC: Chester, Bonnie
Date: 2/2/2010 11:33 AM
Subject: Duncan

I am going to need to call the Court to schedule a hearing.